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KD

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/124,485

07/29/98

ANSTEY

N

73-97

HM12/1001

EXAMINER

GRUN, J.

GREENLEE WINNER AND SULLIVAN
5370 MANHATTAN CIRCLE
SUITE 201
BOULDER CO 80303

ART UNIT

PAPER NUMBER

1641

DATE MAILED:

10/01/99

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/124,485

Applicant(s)

ANSTEY et al.

Examiner

James L. Grun, Ph.D.

Group Art Unit

1641



☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-33 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 1-33 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1641

Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claims 1-26, drawn to methods of treatment, classified in Class 424, subclass 278.1.

II. Claims 27-30, drawn to agents, classified in a variety of subclasses in Class 514, depending upon structure, such as Class 514, subclass 2.

5 III. Claims 31-33, drawn to determining genotype or genetic polymorphism, classified in Class 435, subclass 6.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product
10 as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process of using that product such as in the treatment or assessment of any condition involving nitric oxide other than parasitic infection.

Inventions I and II related to invention III are independent and distinct inventions. The
15 methods of groups I and III are unrelated in purpose, design, or performance. The agents of group II are not required for the performance of the method of group III.

Art Unit: 1641

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter as shown by their different classification, restriction for examination purposes as indicated is proper.

Should Applicant elect either of Inventions I or II, claims 1-30 are generic to a plurality of disclosed patentably distinct species comprising different agents which modify NO. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Should Applicant elect Invention III, claims 31-33 are generic to a plurality of disclosed patentably distinct species comprising determination of different genes. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds

Art Unit: 1641

one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the response to this requirement to be complete must include an election of the invention and species to be examined even though the requirement be traversed.

5 Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

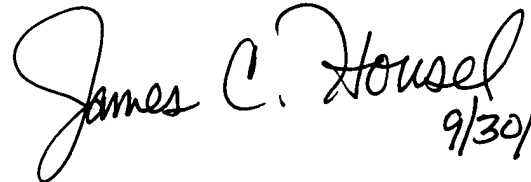
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15 Supervisory Patent Examiner at Donald.Adams@uspto.gov or 703-308-0570. Thank you in advance for allowing us to enhance our customer service. Please limit the use of this dedicated Fax number to responses to Written Restrictions.

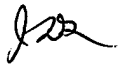
Art Unit: 1641

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to James L. Grun, Ph.D., whose telephone number is (703) 308-3980. The examiner can normally be reached on weekdays from 9 a.m. to 5 p.m.

5 If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, James C. Housel, SPE, can be reached on (703) 308-4027. The fax phone numbers for official communications to Group 1640 are (703) 305-3014 or (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.


9/30/99
JAMES C. HOUSEL
SUPERVISORY PATENT EXAMINER



James L. Grun, Ph.D.
September 28, 1999

10



RESTRICTION ELECTION FACSIMILE TRANSMISSION

DATE:

FROM/ATTORNEY:

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TO EXAMINER: JAMES L. GRUN, Ph.D.

ART UNIT: 1641

SERIAL NUMBER: 09/124,485

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